IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

LETTERS PATENT APPEAL NO. 36 OF 2005

IN

WRIT PETITION NO. 9477 OF 2004

Madhya Pradesh Industrial Development)
Corporation Ltd., a fully stated owned Company)
incorporated under the Companies Act, 1956,)
having its Registered office at A.V.N. Towers,)
Plot No. 192, Zone-I, Maharana Pratap Nagar,)
Bhopal, Madhya Pradesh-462 011.)...Appellant

Versus

The Mumbai District Central Co-op. Bank Ltd.)
a Co-operative Bank incorporated under the)
Maharashtra Co-operative Societies Act, 1960,)
having its Head Office at Mumbai Bank Bhavan,)
207, Dr. D.N. Road, Fort, Mumbai-400 001.)..Respondent

WITH

LETTERS PATENT APPEAL NO. 35 OF 2005

IN

WRIT PETITION NO. 9859 OF 2004

Madhya Pradesh Industrial Development)
Corporation Ltd., a fully stated owned Company)
incorporated under the Companies Act, 1956,)
having its Registered office at A.V.N. Towers,)
Plot No. 192, Zone-I, Maharana Pratap Nagar,)
Bhopal, Madhya Pradesh-462 011.)...Appellant

Versus

The Mumbai District Central Co-op. Bank Ltd.)
a Co-operative Bank incorporated under the)
Maharashtra Co-operative Societies Act, 1960,)
having its Head Office at Mumbai Bank Bhavan,)
207, Dr. D.N. Road, Fort, Mumbai-400 001.)..Respondent

IN BOTH APPEALS:

Mr. R.N. Singh, Advocate General of State of Madhya Pradesh, with Mr. S. Agarwal and Mr. S.K. Jain for the appellant.

Mr. V.A. Thorat, Senior Advocate, instructed by M/s. Mahimtura & Co., for respondent.

CORAM: **DALVEER BHANDARI, C.J.** & **S.A. BOBDE, J.**

DATE: **MARCH 28, 2005**.

ORAL JUDGMENT (Per Dalveer Bhandari, C.J.)

By this judgment, we propose to dispose of two Letters Patent Appeals emanating from the judgment of the learned Single Judge dated 8th February, 2005. For convenience, and to avoid repetition, we are referring to the facts of Letters Patent Appeal No. 36 of 2005.

2. The respondent-Bank on 26th March, 1998 placed with the appellant-Corporation deposit of Rs. 30 crores. On 29th May, 1998, it

further deposited an amount of Rs.20 crores with the appellant and on 6th August, 1999, the respondent further deposited Rs.50 crores with the appellant. Thus, all these deposits of Rs.100 crores were to carry interest at the rate of 16 per cent per annum. The terms and conditions of repayment were contained in letters dated 25th March, 1998 and 5th August, 1999. The appellant-Corporation executed promissory notes, deeds of continuing guarantee and other relevant documents in favour of the respondent-Bank. The appellant repaid some amount towards interest on the said deposits. However, the appellant-Corporation failed to pay the principal amount and remaining interest in spite of several reminders. The appellant-Corporation issued several cheques towards repayment but those cheques were dishonoured and the respondent-Bank was compelled to take necessary action under Section 138 of the Negotiable Instruments Act, 1881. The respondent -Bank filed a case before the Co-operative Court No.1 at Mumbai for recovery of Rs. 113,81,42,814/- with future interest. The dispute was filed under Rule 77-F read with sub-section (4) of Section 84 and 94 of the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as “the Act”).

3. After service of summons, the appellant appeared and sought leave to defend the dispute on several grounds. It was contended that the appellant-Corporation was not a member of the respondent-Bank and, therefore, dispute is beyond the territorial jurisdiction of the respondent-Bank and is not tenable under Section 91 of the Act. The appellant is located in the State of Madhya Pradesh and no cause of action had taken place in Mumbai and, therefore, the Co-operative Court at Mumbai had no territorial jurisdiction. It was contended that the respondent committed certain breaches of Banking Regulation Act as well as directives given by the Reserve Bank of India from time to time in respect of the deposits. Due to reduction in the rate of interest in the market as per the directions of the Reserve Bank of India, there was correspondence between the parties to revise the agreed rate of interest. The appellant made payment of Rs. 10 crores as the respondent had agreed to revise the terms and conditions of deposits. However, without acting on the same, the respondent adjusted the amount of Rs.10 crores, according to its convenience. It was also contended that, according to the directives given by the Reserve Bank of India about the rate of interest, the respondent cannot charge interest

at the rate of 16 per cent per annum on its deposits.

4. It was also contended before the trial Court that in view of the Full Bench judgment of this Court, the disputes for recovery of Rs.10 lakhs and above filed by the Co-operative Banks or Co-operative financial institutions could be tried only by the Debts Recovery Tribunal and not by the Co-operative Court. It was contended that in view of the said judgment, the Co-operative Court also did not have pecuniary jurisdiction to entertain the suit.

5. After hearing the arguments of both sides, the trial Court found that there were several triable issues and particularly when the respondent had failed to produce the document to show that the respondent was its member and that due to the judgment of the Full Bench of this Court, the Co-operative Court did not appear to have pecuniary jurisdiction and, therefore, leave to defend should be granted. Accordingly, the trial Court granted unconditional leave to the appellant to defend the dispute by its order dated 4th April, 2003. The said order was challenged before the Maharashtra State Co-operative Appellate Court, Mumbai in revision being Revision Application No. 194

of 2003.

6. It was contended before the appellate Court that the appellant is not entitled to leave to defend without any condition and that the appellant be directed to pay the principal amount as a condition to grant leave to defend. In the judgment of the Tribunal, it is mentioned that the Full Bench of the Bombay High Court held that the claims for and in excess of amount of rupees ten lakhs filed by the Co-operative Banks and financial institutions should be tried by the Debts Recovery Tribunal and to that extent pecuniary jurisdiction of the Co-operative Court is excluded. The judgment of the Full Bench of this Court was challenged before the Apex Court and the Apex court granted stay of the operation of the said judgement. Consequently, the position of law before the judgment of the Full Bench of this Court would be the law. In other words, remedy under the Act would be available. The Tribunal held that there is no question or triable issue on the point of pecuniary jurisdiction of the Co-operative Court.

7. Regarding the question with regard to territorial jurisdiction, the Tribunal found, as a question of fact, that there is no dispute about

execution of promissory notes, deeds of continuing guarantee, etc. The appellant had issued several cheques to the respondent for repayment of certain amount towards part payment of the loan amount. Those cheques were payable at Mumbai by drawer bank, State Bank of Indore, Branch Fort, Mumbai. These cheques were dishonoured and proceedings under Section 138 of the Negotiable Instruments Act, 1881, were adopted in Mumbai. As such it clearly shows that the amount was payable at Mumbai. According to the Tribunal, the entire transaction and the cause of action had taken place at Mumbai and, therefore, prima facie there appears to be no triable issue regarding the territorial jurisdiction of the Co-operative Court in Mumbai. According to the appellant, the respondent has committed certain breaches of directives given by the Reserve Bank of India and the terms of the Banking Regulation Act. The question about demand for revision of interest rate also could not be a triable issue. According to the Tribunal, the appellant had not raised any triable issue and, therefore, the trial Court was not justified in granting leave to defend unconditionally. We find considerable force in the submission of the respondent. The Tribunal correctly came to the conclusion that in view of the facts noted above, there appears to be no good reason to grant leave to defend

the suit.

8. Admittedly, the appellant-Corporation had borrowed an amount of Rs.100 crores from the respondent-Bank and had executed three promissory notes of rupees thirty crores, twenty crores and fifty crores. The agreed rate of interest was 16 per cent per annum. The appellant is a Corporation established by the State Government of Madhya Pradesh and admittedly it is an instrumentality of the State and as such falls within the definition of "State" under Article 12 of the Constitution of India. It is also an admitted fact that huge amounts which were advanced by the appellant to various industrial houses have not been repaid despite repeated demands. According to a newspaper report published in Hindustan Times on 24th July, 2004, the appellant-Corporation is involved in Rs. 719 crores scam involving non-payment of loans granted to certain former Ministers, several I.A.S. Officers and 42 companies.

9. In the impugned judgment, it is incorporated that the appellant, without prejudice to its rights and contentions, made certain

offers to the respondent for settlement of dues. It demanded that complete interest amount should be waived. An amount of Rs.58.76 crores paid by the respondent to the appellant prior to the filing of the dispute towards the interest should be adjusted against the principal amount, as well as another Short Term Deposit of Rs. 100 crores. The appellant offered to re-pay Rs.2.25 crores immediately and the remaining amount of Rs.49 crores in 7 equal yearly instalments of Rs.7 crores each.

10. It was contended on behalf of the appellant that it is not in a position to re-pay more than Rs. 2.2 crores. It is mentioned in the impugned judgment that the appellant's financial condition is such that it is unable to meet its commitments. It may be pertinent to mention that the appellant had undertaken to re-pay the entire amount in 7 years; but now, it is contended that it is unable to pay more than Rs. 2.2 crores. This shows that the appellant is at the stage of bankruptcy or liquidation.

11. In the impugned judgment, it is also incorporated that the technical plea, in the circumstances, however, taken by the appellant-

Corporation does not appear to be genuine. There is no need and no purpose would be served by granting leave to defend the dispute unconditionally or with condition of payment of paltry amount of Rs.2.7 crores against the claim of Rs.130 crores plus with interest for years. The Court came to the conclusion that it does not deserve leave, unless the appellant is able to pay substantial amount. The Court grants leave to defend the dispute, subject to payment of not less than 25% of the total amount, viz., Rs.25 crores by the appellant. It is observed that an amount is deposited in Court. The respondent would be at liberty to withdraw that amount. The appellant shall not have the right to defend the dispute.

12. The appellant-Corporation, aggrieved by the impugned judgment, filed Writ Petition No. 9477 of 2004 in this Court.

13. The learned Single Judge has observed that as noted by the Revisional Court, only Rs. 58.76 crores have been paid by the appellant prior to the filing of the dispute, and the balance payment as agreed by the appellant in its letter dated 9th September, 2004 comes to Rs.51.24 crores. On the face of these admitted liabilities, the

application submitted by the appellant seeking leave to defend the dispute unconditionally was certainly frivolous and the issues raised in the said application would not come in the way of deciding the summary proceedings. The approach of the appellant does not go well with its statute as a State Corporation. The sympathetic view taken by the Revision Court is, therefore, uncalled for in the peculiar facts and circumstances. A substantial liability has been admitted by the appellant from time to time and what was mainly disputed was only the interest amount and in the summary proceedings, the directions to deposit Rs.25 crores are unsustainable. The balance of at least Rs.51 crores plus is an admitted liability by the appellant. Under the circumstances, the order of the Revision Court also has to be set aside, and the appellant does not deserve the sympathetic view taken. Consequently, the application filed by the appellant under Order XXXVII, Rule 3(5), of the Code of Civil Procedure, 1908 before the Co-operative Court, was rejected.

14. The appellant submitted that the learned Single Judge was in error in disposing of the entire matter, whereas the Writ Petition was at the admission stage, and the question in the Writ Petition was of

granting leave conditionally or unconditionally to the appellant to defend the dispute before the trial Court and in the matter of this nature, it is a general principle of law that neither the Revisional Court nor the higher Courts should interfere with such interim order passed by the trial Court unless there was error on face of the record.

15. We have heard the learned counsel for the parties.

16. Even in the plea before the Division Bench, this fact is not disputed. The appellant has to pay a balance amount of Rs.51.24 crores at that time, now, of course, with the mounting interest, it is much more. The only possible dispute which the appellant has is regarding the rate of interest; but there is no justification for the appellant in not paying the admitted amount of Rs.51.24 crores. The learned Single Judge was justified in not granting leave to defend the dispute to the appellant.

17. We find no substance in the argument that since the matter was listed only for admission, the Court could not have finally disposed of the matter. In the instant case, the only issue involved was regarding

grant of leave on condition. Taking any view in the matter would have led to disposal of the Writ Petition. The appellant-Corporation had no defence whatsoever and in the facts and circumstances, the appellant was not entitled for unconditional leave to defend the dispute, and the learned Single Judge was justified in modifying the order of the trial Court.

18. We have carefully examined the impugned judgment and have analyzed the facts of this case in great details. Admittedly, the appellant has to pay Rs. 51.24 crores plus interest to the respondent, which is taken note of by the learned Single Judge. In our considered view, no interference is called for.

19. Both the appeals, being devoid of any merits, are accordingly dismissed with costs.

CHIEF JUSTICE

S.A. BOBDE, J.